

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2596 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NARANBHAI D. CHAMAR

Versus

DIST. DEVELOPMENT OFFICER

Appearance:

MR I.S.SUPEHIA for Petitioner

MR HS MUNSHAW for Respondent Nos. 1 & 4

MR.B.Y.MANKAD, learned A.G.P. for respondents

Nos.2 and 3.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 17/02/99

ORAL JUDGEMENT

1. The petitioner was initially appointed by the Taluka Development Officer, Chanasma on 21.8.71 against the vacant post of Watchman in the office of the Taluka Panchayat. The appointment order dated 21.8.71 enclosed with the Special Civil Application as Annexure 'A' shows that for the purpose of giving appointment against the

vacant post of Watchman, the names were called from the Employment Exchange, Mehsana and the candidates, whose names were sponsored by the Employment Exchange, were called for interview on 29.7.70. The petitioner was selected in the aforesaid interviews and was given appointment as Watchman on a fixed pay of Rs.80/- per month. This order also shows that this appointment was given on ad hoc basis. Thereafter, the Development Commissioner for the State of Gujarat passed an order Annexure 'B'. The revised pay scale of Rs.196-232 was sanctioned for the aforesaid post of Watchman, against which the petitioner was working, and sanctioned pay scale was to be paid out of the funds of the Taluka Panchayat itself. By an order Annexure 'C' dated 29/12/86 passed by the office of District Panchayat, looking to the financial position of the funds of the District Panchayat, it was resolved to abolish the post of Watchman. The request was made by the Taluka Development Officer to the Development Commissioner for petitioner's absorption against the post of Peon and the Development Commissioner gave the sanction for petitioner's absorption as a Peon provided he fulfills the educational qualifications and accordingly the petitioner was appointed against the post of Peon, which had become available on account of the transfer of one Shri Patni. The conditions mentioned in this order Annexure 'C' show that the petitioner was given the pay scale of Rs.196-3-232 as he was found to possess the necessary educational qualifications. It was also one of the conditions in this order that his seniority as a Peon shall be counted from the date of his appointment as Peon and yet his pay, seniority, etc, shall be subject to any further orders, which may be passed by the Government. This order dated 29.12.86 was issued under the signatures of the District Development Officer, Mehsana. The office of Taluka Panchayat, Chanasma then relieved the petitioner to report at Pathal Kuva Shakha of Taluka Panchayat, Chanasma on 2.1.87. On 1.12.88 the Taluka Development Officer, Chanasma passed an order with reference to the letter dt.26.10.88 of Panchayat & Rural Housing Construction Department that his past services shall not be counted for the purposes of seniority, pension, pay, etc. The petitioner represented against the same, but by communication dt.23.6.92 he was informed that his request dt.19.2.91 cannot be accepted. The petitioner then approached the Gujarat Civil Services Tribunal but the Tribunal dismissed the petitioner's Appeal on 14.10.93 against the orders dated 1.12.88 read with the Panchayat & Rural Housing Construction Department's letter dt.26.10.88 and the order dt.23.6.92 on grounds of limitation and jurisdiction because it was

Government's decision dated 26.10.88 which was under challenge. Thereafter, on 4.12.93 the Deputy District Development Officer passed an order that whereas the past services could not be counted the excess payments made to him are to be recovered from him.

2. At this stage the petitioner preferred the present Special Civil Application before this Court on 22.2.94 with the prayer for quashing the orders dated 26.10.88, 1.12.88, 23.6.92 and 4.12.93 with the declaration that the petitioner was entitled to protection of his pay, continuity of service and pension benefits. Rule was issued on 23.2.94 and on the same day ad interim relief was granted in terms of para 8(B) subject to the condition that the petitioner gives an undertaking that in case the petition fails, he shall refund the difference. Such undertaking given by the petitioner on 4.3.94 is on record. An affidavit-in-reply dt.13.5.94 has been filed on behalf of respondent No.1 i.e. District Development Officer, Mehsana. No reply has been filed by the other respondents.

3. I have heard learned counsel Mr.I.S.Supehia for the petitioner and Mr. H.S.Munshaw and Mr.Mankad, learned A.G.P. for the respondents and have also gone through the impugned orders. It is amply clear from the order Annexure 'C' dated 29.12.86 that the Development Commissioner had sanctioned for petitioner's absorption as Peon and accordingly the order dt.29.12.86 was passed. By this time the petitioner had already served for about 16 years as a Watchman since 1971. It is a case in which the Panchayat decided to abolish the post of Watchman, against which the petitioner was working, because it was to pay for this post out of its own funds and it was facing a financial crisis. Under these circumstances, the petitioner's absorption was sought on the post of Peon and the same was accordingly sanctioned by the Development Commissioner. Merely because in this order against the sanctioned absorption by the Development Commissioner, the District Development Commissioner has used the word 'appointment', it cannot be said that it was a case of fresh appointment given to the petitioner. In this order also, the petitioner was given the pay scale of Rs.196-232 and it is the common case of the parties that so far as the pay scale is concerned, the pay scale for the post of Watchman as well as Peon are the same. In this order also the question with regard to pay, seniority, etc., was left open and was made subject to further orders, which may be passed by the Government. However, the Panchayat & Rural Housing Construction Department took the view that the petitioner was not

entitled to the seniority, pension and pay for the services rendered by him as a Watchman prior to his absorption as a Peon and thus the order, which was passed by the Panchayat & Rural Housing Construction Department, virtually comes to the forfeiture of the petitioner's past services for a period of about 16 years and the petitioner stands deprived of all the benefits for such a long period of 16 years of services rendered by him and on that basis the recovery of the excess payment was also ordered. In the affidavit-in-reply dt.13.5.94, the respondent No.1 has taken an entirely new and strange stand to say that the petitioner's initial appointment as Watchman was not a regular appointment and, therefore, he was not entitled to any benefit for the services rendered by him prior to 1986 as Watchman. In the first instance, it may be pointed out that the very tenor of the initial appointment order dt.21.8.71 shows that the petitioner's name was sponsored by the Employment Exchange and he had competed alongwith other candidates in the interview and was given appointment on the basis of his selection at the aforesaid interviews and, therefore, it cannot be said that the petitioner's initial appointment was irregular. Besides this, in the orders, which have been placed on record, there is no mention that he has been denied the benefits of the past services because the initial appointment was irregular. Even if it is assumed, without admitting, for the sake of argument that the appointment, which was initially given to the petitioner, was not a regular appointment in the strict sense of the term, the fact remains that he was appointed on the basis of a selection through interviews as sponsored by the Employment Exchange and on that basis he had continued in the service as a Watchman for a period of nearly 16 years and even thereafter when the post of Watchman was abolished by the concerned Department, the Development Commissioner had sanctioned his absorption. In such case, when a person holding one post is declared surplus and absorbed against another post because the earlier post held by him is decided to be abolished, he cannot be deprived of the benefits of the service rendered on the post, which is abolished, irrespective of the nature of the appointment held by him. If at all the concerned Panchayat or the concerned Department thought that the petitioner's initial appointment was not in order, it would have been difficult for the Panchayat or the concerned Department to terminate the services of the petitioner after a period of 16 years and ignore the fact that his appointment had an element of selection based on interviews from amongst the candidates, who had been sponsored by the Employment Exchange. Even otherwise, if the services rendered by an employee for a period over 16

years are ordered to be forfeited for the purposes of seniority, pay and pension, it virtually amounts to the forfeiture of the services rendered by him for such a long period of 16 years, which is certainly a penalty and such penalty cannot be imposed against an employee without following the regular procedure prescribed under the Rules. So also this Court finds that the order, which was passed against the petitioner forfeiting his services of 16 years as Watchman, is on the face of it illegal and cannot be sustained in the eye of law. On that basis, the impugned orders emanating from the basic order dt.26.10.88 and the consequential orders dated 1.12.88, 23.6.92 and 4.12.93 are all found to be illegal, the same cannot be sustained in the eye of law and all these impugned orders are hereby quashed and set aside. There is no question of any recovery of the so called excess payments said to have been made to the petitioner and the petitioner is found to be entitled to all the consequential benefits for the past services rendered by him as a Watchman since the initial date of his appointment i.e. 21.8.71 for the purposes of pay, seniority, pension, etc., including the due increments for the period prior to the filing of the petition and after the filing of the petition, in accordance with law, as if the impugned orders had never been passed against him.

4. This Special Civil Application is, therefore, allowed. Rule is made absolute accordingly. The undertaking dated 4.3.94 given by the petitioner automatically becomes infructuous because the Special Civil Application has been allowed. No order as to costs.